IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 34 OF 2006

Dil Bahadur,
presently lodged in
Central Jail – Aguada,
Sinquerim, Bardez, Goa. ..... Appellant.

V/s.

State of Goa,
as represented by
Officer-In-Charge, Anti Narcotic Cell P.S.
Panaji, Goa. ..... Respondent.

Mr. Nigel da Costa Frias, Advocate under Legal Aid Scheme for the appellant.

Mr. C. A. Fereira, Public Prosecutor for the State/Respondent.

CORAM : D.B. BHOSALE, J.

DATE : DECEMBER 7, 2007.

ORAL JUDGMENT :

This appeal is directed against the Judgment and Order dated 20.4.2005, rendered by the Special Judge, N.D.P.S. Court, Mapusa in Special Criminal Case No. 10/2004, by which the appellant-accused has been convicted and sentenced to undergo Rigorous Imprisonment for a term of four years for the offence punishable under Section 20(b)(ii)(B) of the

Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and to pay a fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for a term of 6 months. The period in custody from the date of his arrest i.e. 18.1.04 till the date of Judgment, was directed to be set off against the sentence of imprisonment under Section 428 Cr.P.C.

2. The prosecution case, in short, is that upon receipt of the reliable information by PW.4-Police Inspector, Anti Narcotic Cell Police Station, Panaji, after following the due procedure, intercepted the accused and recovered 600 grams of charas from his possession. In the course of investigation, the contraband article was sent to PW.1 – the Scientific Officer, who prepared his report, which is placed on record. In the course of trial, the prosecution examined 6 witnesses, consisting of PW.1, Scientific Officer, PW.2, the constable who delivered the contraband article to PW.1, PW.3, who acted as a Panch during the raid, PW.4, Investigating Office, PW.5, Dy.S.P. who was present during the raid and who had authorised the said raid under Section 42 of the Act and PW.6, Police Inspector who identified seals on the envelope containing contraband article and produced the station diary showing that he had received the muddemal article . The trial Court, appreciated the evidence in the light of the defence propounded by the accused and has recorded the conviction by the impugned judgment.

3. In this case, the accused came to be arrested on 18.1.04 and since then he has been undergoing imprisonment and the period of 4 years of sentence will come to an end on 17.1.08. In view thereof, the learned Counsel for the parties, after arguing the case on merits for sometime, confined their arguments on the sentence of the accused. Learned Counsel for the appellant submitted that the accused has virtually undergone the entire sentence and in view thereof, the sentence in default in making the payment of fine may be reduced to the extent so that he would not have to undergo the total imprisonment for more than four years or the substantive sentence may be reduced from 4 years to 3 and half years so that the accused would be set at liberty on completion of four years imprisonment i.e. on 17.1.08.

4. Considering the submissions advanced by the learned Counsel for the appellant, so also the age of the accused and that he has no other conviction to his credit, under the provisions of the Act and further that the contraband found in his possession was not a commercial quantity, I am inclined to reduce the sentence as prayed. In the circumstances, this appeal stands partly allowed and disposed of by the following order :

The order of conviction is maintained. However, the sentence awarded by the trial Court stands reduced from 4 years to 3 and half years

for the offence punishable under Section 20(b)(i)(B) of the Act. Rest of the judgment and the operative portion of the Judgment remains unaltered. The appeal, accordingly, stands disposed of.

D.B. BHOSALE, J.

ssm.